



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION IX  
 75 Hawthorne Street  
 San Francisco, CA 94105

June 10, 2009

**SPECIAL NOTICE LETTER FOR REMEDIAL DESIGN/REMEDIAL ACTION (RD/RA)  
 FOR OMEGA CHEMICAL CORPORATION SUPERFUND SITE OPERABLE UNIT ONE  
 (OU-1)**

Mr. David Cohen  
 The Boeing Company  
 For McDonnell Douglas Helicopter Company  
 2201 Seal Beach Boulevard, Mailcode WSB33  
 PO Box 2515  
 Seal Beach, CA 90740

Re: McDonnell Douglas Helicopter Company  
Omega Chemical Corporation Superfund Site, Whittier, California

Dear Mr. Cohen:

The United States Environmental Protection Agency ("EPA") has been conducting response actions at the Omega Chemical Corporation Superfund Site in Whittier, California ("Site"). The Site includes the location of a former refrigerant and solvent recycling facility ("Omega Chemical") located at 12504 and 12512 Whittier Boulevard in Whittier, California. The term "Site" (as used herein) refers to both the former Omega Chemical property and the areal extent (i.e., plume) of contaminated groundwater emanating from that property. In order to facilitate cleanup of hazardous substances at the Site, EPA divided the Site into operable units ("OUs"). OU-1 includes the former Omega Chemical facility and immediate vicinity.<sup>1</sup> OU-2 is the contamination in groundwater that originated from the former Omega Chemical facility and now extends more than four miles downgradient of OU-1.

EPA considers you to be potentially responsible for the costs incurred in connection with contamination at the Site and hereby requests your participation in upcoming negotiations to conduct the remedy for OU-1 vadose zone soils. (The term "you", as used herein, means McDonnell Douglas Helicopter Company). Under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607 ("CERCLA"), responsible parties are liable for the cleanup of the Site, including all costs incurred by the government in responding to releases at the Site.

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<sup>1</sup> OU-1 is the area that was defined as the "Phase 1A area" in the Partial Consent Decree (No. 00-12471) filed by the U.S. District Court, Central District of California, on February 26, 2001.

The Omega Chemical Site PRP Organized Group (“OPOG”) is the workgroup formed by the majority of the potentially responsible parties (“PRPs”) that each sent at least 10 tons of hazardous materials to the Site (also known as “major generator PRPs”). In November 2007, with EPA oversight, OPOG completed a Remedial Investigation (“RI”) for the OU-1 vadose zone soils (i.e., soils between the ground surface and the water table). OPOG completed the OU-1 Feasibility Study (“FS”) for these soils in May 2008. The FS evaluated various remedial action alternatives, and was released for public comment (along with EPA’s Proposed Plan for Soil Cleanup) in June 2008. After reviewing public comments on the FS and the Proposed Plan, EPA selected a remedial action, which is outlined in the OU-1 Record of Decision (“ROD”), issued by EPA in September 2008. The remedial action selected in the ROD is to be implemented during the upcoming Remedial Design/Remedial Action (“RD/RA”) period. We anticipate the remedial action will be implemented primarily by major generator PRPs. The OU-1 ROD is provided on the compact disc included with this letter and is also available on the Internet at [www.epa.gov/region09/OmegaChemical](http://www.epa.gov/region09/OmegaChemical).

EPA has determined that the use of the special notice procedures set forth in Section 122(e) of CERCLA, 42 U.S.C. Section 9622(e), may facilitate a settlement between EPA and the major generator PRPs for OU-1. Thus, in accordance with Section 122 of CERCLA, this letter triggers a 60-day moratorium on certain EPA response activities at the Site. During this 60-day moratorium period, you and the other major generator PRPs are invited to participate in formal negotiations with EPA. You are also encouraged to voluntarily negotiate a settlement providing for the major generator PRPs to conduct or finance the OU-1 response activities required at the Site. The 60-day negotiation moratorium will be extended for an additional 60 days if EPA determines that the PRPs have provided EPA with a good-faith offer to conduct or finance the RD/RA response activities. We will consider this letter to have been received by you seven calendar days after its date. Should a 120-day negotiation moratorium take place, negotiations will conclude on October 15, 2009.

We anticipate that a settlement between EPA and the major generator PRPs would be embodied in a Consent Decree (“CD”) to be executed within the 120-day negotiation period. A proposed CD is included on the enclosed compact disc to assist you in developing a good-faith offer. This draft CD is not currently binding on EPA and is subject to revision and approval by EPA and the United States Department of Justice (“DOJ”).

If EPA is unable to reach agreement with the major generator PRPs within the 120-day period, EPA will take appropriate measures to ensure the implementation of the remedial action.

### **Requirements for a Good-Faith Offer**

As indicated above, the 60-day negotiation moratorium triggered by this letter is extended for 60 days if the PRPs submit a good-faith offer to EPA. A good-faith offer to conduct or finance the RD/RA consists of **one** written proposal by the interested PRPs that demonstrates the PRPs’ qualifications and willingness to conduct or finance the design, implementation, and monitoring of the remedy, and to reimburse EPA’s past and future response costs.

In order for your proposal to be considered a good-faith offer, it must contain the following elements:

- \* A statement of your willingness to conduct or finance the remedial action that is consistent with the ROD and proposed CD, and that provides a sufficient basis for further negotiation;
- \* A demonstration of your technical capability to undertake the remedial action, including the identification of the firm(s) that may actually conduct the work or a description of the process by which the firm(s) will be selected;
- \* A statement of your willingness to reimburse EPA for past costs as well as the costs EPA would incur in overseeing your implementation of the remedial action;
- \* A response to the proposed CD. If your offer contemplates modifications to the proposed CD, please work from this CD and submit a version showing any modifications to it;
- \* A detailed statement of work or workplan identifying how you intend to proceed with the remedial action. We have enclosed a proposed statement of work for RD/RA that we would accept as part of a good-faith offer. If your offer contemplates modifications to the proposed statement of work, please work from this draft and submit a version showing any modifications to it; and
- \* The name, address, and telephone number of the person or party who will represent you in negotiations.

### **Potential Orphan Share**

Pursuant to the Superfund Reforms announced October 2, 1995, when EPA enters into future RD/RA settlements, EPA intends to compensate settlers for a portion of the shares specifically attributable to insolvent and defunct PRPs ("orphan share"), if any. There are PRPs at this Site who are insolvent or defunct. EPA does not, however, expect to consider orphan shares as part of the OU-1 RD/RA negotiations discussed in this letter. EPA's investigation of PRPs at the Site is not yet complete. Rather, consideration of orphan shares would be more appropriate after EPA has selected a remedy for Sitewide contamination (i.e., embodied in a Record of Decision that addresses OU-2 contamination). If, however, you, either individually or with other PRPs, agree to enter into an OU-1 RD/RA settlement with EPA, resolve all of EPA's unreimbursed Sitewide response costs, and provide sufficient information about the existence, liability, and relative shares of responsibility of insolvent and defunct PRPs, EPA will, as part of these OU-1 RD/RA negotiations, analyze the information, and determine whether to consider such orphan shares in such settlement.

For purposes of this reform, the term orphan share refers to that share of responsibility specifically attributable to identified parties EPA has determined are: (1) potentially liable; (2) insolvent or defunct; and (3) unaffiliated with any party potentially liable for response costs at

the Site. You should note that this definition of orphan share does not include shares due to, for example: (1) unallocable waste; (2) the difference between a party's share and its ability to pay; or (3) those parties, such as *de micromis* contributors, municipal solid waste contributors or certain lenders or residential homeowners, that EPA would not ordinarily pursue for cleanup costs.

If you believe that there are insolvent or defunct PRPs at the Site, you should submit to EPA the names, addresses, evidence of liability and relative shares of responsibility for each such insolvent or defunct PRP, together with detailed information as to the basis for your claim that each such party is insolvent or defunct, as defined by EPA's guidelines.

### **Resources for Small Business**

As you may be aware, on January 11, 2002, President Bush signed into law the Superfund Small Business Liability Relief and Brownfields Revitalization Act. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law via the Internet at <http://www.epa.gov/swerosps/bf/sblrbra.htm>.

EPA has created a number of helpful resources for small businesses. EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at [www.epa.gov](http://www.epa.gov). In addition, the EPA Small Business Ombudsman may be contacted at [www.epa.gov/sbo](http://www.epa.gov/sbo).

For your information, enclosed is an information sheet intended to inform small businesses of their rights under the Small Business Regulatory Enforcement Fairness Act ("SBREFA") to comment to an Ombudsman about EPA enforcement activity. This information sheet also provides information on compliance assistance available to small businesses. We have included this information sheet without making a determination whether your business is a small business as defined by Section 222 of SBREFA or related provisions.

### **Demand for EPA Costs**

In accordance with CERCLA, EPA has already undertaken certain actions and incurred unreimbursed costs of at least ten million dollars (\$10,000,000) plus interest, in response to conditions at the Site. The amount of these costs will be provided to you during the negotiations. EPA also anticipates expending additional funds for response activities at the Site, including a remedial action or oversight of a remedial action. In accordance with Section 107(a) of CERCLA, demand is hereby made for payment of the above amount plus any and all interest recoverable under § 107 or under any other provisions of law.

As indicated above, EPA anticipates expending additional funds for the RD/RA. Whether EPA funds the entire RD/RA or simply incurs costs by overseeing the parties conducting the response activities, you are potentially liable for all expenditures plus interest.

Interest on past costs incurred shall accrue from the date of this demand for payment or any earlier demand, whichever is earlier; interest on future costs shall accrue from date of expenditure, pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a). Interest rates are variable. The rate applicable on any unpaid amounts for any fiscal year is the same as is specified for interest on investments of the Hazardous Substance Superfund which is determined by the Department of the Treasury.

EPA is not required by CERCLA to issue a written demand for recovery of prejudgment interest. However, the date a written demand is made may be used by a court in determining the date from which prejudgment interest begins to accrue.

In the event that you file for protection in the Bankruptcy Court, EPA reserves the right to file a Proof of Claim or Application for Reimbursement of Administrative Expenses against the debtor's estate.

If EPA does not receive your response within the 60-day moratorium period, EPA will conclude that you do not wish to negotiate a resolution of your liabilities in connection with this response action and that you have declined any involvement in performing the response activities. However, you may be held liable by EPA under Section 107 of CERCLA for the cost of the response activities EPA performs at the Site. If a settlement cannot be reached and the PRPs elect not to implement the ROD, EPA may choose from among the following options in order to assure its implementation: EPA may issue a unilateral order to the PRPs under CERCLA § 106(a) to perform the work described in the ROD; EPA may fund the remedial action; or EPA may pursue civil litigation against the PRPs, pursuant to CERCLA §§ 106(a) and 107(a), 42 U.S.C. §§ 9606 and 9607.

## **WORKGROUP INFORMATION**

EPA encourages good-faith negotiations between the PRPs and EPA, as well as among PRPs. For your information, enclosed is a complete list of the names and addresses of PRPs being sent similar special notice letters. In addition, OPOG's contacts are:

Keith F. Millhouse, Esq.  
(805) 230-2280

Larry G. Gutierrez, Esq.  
(213) 430-2507

Gene A. Lucero, Esq.  
(213) 891-8332

We also have enclosed with this letter tables showing the volume of hazardous substances each PRP sent to the Site, sorted alphabetically and by volume. The table includes only those PRPs being sent a special notice letter. Please note that the list of parties and waste volumes is subject to revision based upon new information as it becomes available. Finally, the three most recent fact sheets about the Site are enclosed. Additional Fact Sheets and further information

about the Site can be found on the following EPA webpage:

<http://www.epa.gov/region09/OmegaChemical>

If you have any technical questions regarding the Site or this letter please contact:

Lynda Deschambault, SFD-7-1  
United States Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105  
(415) 947-4183  
deschambault.lynda@epa.gov

Please direct any legal questions to:

Steve Berninger, ORC-3  
U.S. Environmental Protection Agency, Region IX  
Office of Regional Counsel  
75 Hawthorne Street  
San Francisco, CA 94105  
(415) 972-3909  
berninger.stephen@epa.gov

My staff and I look forward to working with you during the coming months.

Sincerely,



Kathleen Salyer  
Assistant Director, Superfund Division  
California Site Cleanup Branch

Enclosures

- Record of Decision, Operable Unit 1 (Soils), Omega Chemical Corporation Superfund Site, Whittier, California, September 2008 (provided on enclosed compact disc)
- Draft Consent Decree (provided on enclosed compact disc)
- Draft Statement of Work for RD/RA (provided on enclosed compact disc)
- Information Sheet, U.S. EPA Small Business Resources
- List of PRPs being sent Special Notice Letters
- Table of PRP volume allocation (Alphabetical Order)
- Table of PRP volume allocation (Volumetric Order)
- U.S. EPA Fact Sheet: "Update on Site Activities", February 2008
- U.S. EPA Fact Sheet: "Proposed Plan for Soil Cleanup", June 2008
- U.S. EPA Fact Sheet: "EPA Selects Cleanup Plan for Soils at Omega Site", February 2009

cc: Karl Fingerhood, DOJ EES  
Steve Berninger, EPA ORC  
Lynda Deschambault, EPA  
Linda Ketellapper, EPA  
Fred Schauffler, EPA  
Larry Gutteridge, OPOG  
Gene Lucero, OPOG  
Keith Millhouse, OPOG



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June 11, 2009

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